APPENDIX A

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TENNESSEE
NORTHERN DIVISION

CIVIL ACTION No. 3431

JOHN L. LEWIS and JOSEPHINE ROCHE, as TRUSTEES of the UNITED MINE WORKERS OF AMERICA WELFARE AND RETIREMENT FUND.

HENRY G. SCHMIDT, Trustee (amended 8-11-58), *Plaintiffs*,

v.

JAMES M. PENNINGTON, RALPH E. PHILLIPS and *BRUCE PHILLIPS, Individually and trading as PHILLIPS BROTHERS COAL COMPANY, A Partnership,

*LILLIAN GOAD PHILLIPS, Admrx, as defendant and cross plaintiff in the place and stead of Bruce Phillips (substituted 9-30-60), *Defendants*,

v.

UNITED MINE WORKERS OF AMERICA, *Cross Defendant*.

* * * * * * * * * * *

Filed July 31, 1961

Opinion Rendered From the Bench

This case was tried to a jury and the Court and consumed approximately five weeks of trial time. The jury returned a verdict on May 19, 1961 in response to two verdict forms, the pertinent parts of which read as follows:

* * * * * * * * * * *

The other verdict form is as follows:

"1. Did the Trustees engage in a combination or conspiracy so as to unreasonably restrain trade or monopolize

commerce among the several states, as alleged by the original defendant, Phillips Brothers Coal Company?"

The jury answered "yes".

For convenience the International Union will be referred to as U.M.W.; James M. Pennington, et al, as Phillips Brothers; and Messrs. John L. Lewis, Henry G. Schmidt and Miss Josephine Roche as Trustees.

* * * * * * * * * * *

This brings us to the Trustees' motion to set aside the verdict of the jury and to enter judgment in their favor for $55,982.62 with interest. The motion is based upon the proposition that the evidence is insufficient in law to sustain the verdict of the jury that the Trustees engaged in the conspiracy charged in the counterclaim.

The overt acts charged against the Trustees are:

(a) The Trustees paid benefits only to members of U.M.W.

(b) The Trustees required the beneficiaries of the trust to picket or perform other acts for the U.M.W. in order to obtain or retain pension benefits, or acquiesced in the doing of these things by the beneficiaries.

(c) The Trustees, as a punitive measure, brought legal actions to recover royalties on coal produced.

(d) The Trustees held out to the men in the industry that the Fund was under Union control.

(e) The Fund, in fact, was under the domination and control of the U.M.W.

The Court charged the jury that these acts standing alone were not sufficient to establish that the Trustees were co-conspirators.

The Court further charged the jury that the acts of individuals, unless the Trustees actually authorized the unlawful acts, if any, or ratified such acts, if any, after actual knowledge thereof, would not bind the Trustees so as to make them parties to the alleged conspiracy.

The Court further charged that the Trustees, in their official capacity, had no legal right to require or not to require the beneficiaries of the Fund to picket on behalf of U.M.W. in labor matters; that the Trustees were legally obligated to collect all monies due the Fund and to use reasonable means to make such collection, including the bringing of suits; that the Fund "was created by a trust instrument contained in the National Bituminous Coal Wage Agreement of 1950 pursuant to Section 302 of the Taft-Hartley Act, and the wording of the trust agreement was in accordance with the requirements of the Taft-Hartley Act. The trust instrument provides for payment of benefits to employees of signatory operators. . ."

Action of a majority of the Trustees is required to bind the Fund. See *Van Horn* v. *Lewis*, 79 F. Supp. 541.

In the opinion of the Court there is no substantial evidence to support the verdict of the jury that a majority of the Trustees participated in the alleged conspiracy. There is no evidence that either Miss Josephine Roche or Mr. Henry G. Schmidt or Mr. Charles A. Owen, now deceased, (those parties being the only parties, except Mr. John L. Lewis, who served the trust fund after 1950), had any dealings with large coal operators from which it could be inferred that they agreed, combined, or conspired to stabilize coal prices in the bituminous coal industry in interstate commerce.

The actions of Mr. Lewis alone without authorization or consent of a majority of the Trustees would not be sufficient, in the opinion of the Court, to bind the Fund or to show that the Trustees conspired with the large coal operators to drive a small operator out of business. If it had been shown that Mr. Lewis controlled the actions of the other Trustees at the time this alleged conspiracy was formed, this might present a different question.

In the opinion of the Court there is no evidence to support the verdict of the jury that Mr. Lewis, for himself and another of the Trustees, entered into the conspiracy so as

to bind the Trustees either individually or in their capacity as trustees or to bind the Trust Fund.

The charge that the Trustees were conspirators seems to have been directed at Mr. Lewis. This can very well be understood inasmuch as Mr. Lewis served in a dual capacity. He was president of the U.M.W. during the material period and also chairman of the Fund during this period.

Counsel for Phillips Brothers pointed out in their brief that Mr. Lewis made certain statements in his testimony given on discovery to the effect that the U.M.W. and some of the large coal operators decided to stabilize prices, but some of his testimony during the trial was not entirely consistent with that testimony. If there is a sound basis for such contention, we do not believe that this is sufficient to sustain the verdict of the jury that the Trustees participated in the conspiracy.

The evidence is reasonably clear that Union membership was not a prerequisite for obtaining benefits from the Fund after 1950. In that connection, it must be recalled that in 1951 the Trustees published a brochure setting forth in detail the requirements of pension benefits, not one of which was Union membership. Trustees Roche, Schmidt and Lewis each testified that benefits from the Fund have been paid to non-Union members as well as to Union members. Such was also the testimony of counsel Mitch.

The evidence is insufficient to show that the Trustees instituted suits for the purpose of eliminating small operators. Trustees Roche and Schmidt testified that the matter of institution of suits was left in the hands of counsel Mitch for the most part.

The evidence is insufficient to show that the Trustees required pensioners to picket for the U.M.W. in order to obtain or retain benefits of the Fund.

The evidence is insufficient to show that the Trustees held out to industry employees that the Fund was under Union control. The Trustees testified positively that the Union

did not dominate or control the Fund. The evidence is insufficient to show the contrary.

It is true that there are some suspicious circumstances in the record not only as to these matters but also as to other charges against the Trustees. However, a juror's verdict cannot be based upon suspicion alone. *N.L.R.B.* v. *Sun Shipbuilding & Dry D. Co.*, (C.A. 3), 135 F. 2d 15, 31.

Substantial evidence means more than merely the suspicion of the existence of a fact. *Hazel-Atlas Glass Co.* v. *N.L.R.B.*, (C.A. 4), 127 F. 2d 109, 117.

Having found that there is no substantial evidence to support the verdict of the jury that the Trustees engaged in the conspiracy as charged by Phillips Brothers, it follows as a matter of contract that the Trustees are entitled to recover unpaid royalties due them under the contract signed by Phillips Brothers, but the Trustees are not entitled to recover the royalties that accrued before a majority of the employees of Phillips Brothers became members of the Union. At the time Phillips Brothers signed the National Bituminous Coal Wage Agreement of 1950, the U.M.W. did not represent a majority of their employees and therefore was not the bargaining agent for the employees. We think that a fair interpretation of the record shows that a majority of the employees of Phillips Brothers joined the Union on April 25, 1955. The Trustees, therefore, are entitled to recover unpaid royalties that accrued after that date. The Court bases this conclusion on the principles announced in the case of *International Ladies Garment Workers' Union, AFL-CIO* v. *N.L.R.B. and Bernhard-Altmann Texas Corporation*, U. S. Supreme Court, June 5, 1961.

In view of the foregoing conclusions, it is not necessary for the Court to determine the question of whether the Trustees would be deprived of recovery if there had been evidence to support the verdict of the jury that the Trustee joined in the conspiracy, as charged by Phillips Brothers.

* * * * * * * * * *

APPENDIX B

Entered August 2, 1961

Judgment

This case came on to be heard before the Honorable Robert L. Taylor, Judge, upon the verdict of the jury, the motion of the plaintiffs-trustees, John L. Lewis, et al, for judgment notwithstanding the verdict of the jury and in the alternative for a new trial, and also upon the motion of the cross-defendant, United Mine Workers of America, for judgment notwithstanding the verdict of the jury and in the alternative for a new trial, together with the petition and supporting affidavits of cross-plaintiffs for the allowance of attorneys' fees, and upon the entire record in the case and the Court having fully considered thereof together with the briefs and arguments of counsel is of the opinion and doth hold and adjudge for reasons stated in a memo delivered from the Bench that there is no material or substantial evidence in this record to support the finding of the jury that he Trustees engaged in a combination or conspiracy so as to unreasonably restrain trade or monopolize or attempt to monopolize commerce among the several states as alleged by the original defendants, James M. Pennington, Raymond E. Phillips, and Lillian Goad Phillips, Administratrix of the Estate of Burse Phillips, deceased, and the partnership known as Phillips Brothers Coal Company.

WHEREFORE IT IS ORDERED AND DECREED that the verdict of the jury in so finding be set aside and the Court doth award the plaintiffs-trustees judgment for a portion of the claim asserted herein by them, finding and holding that said Trustees are entitled to have and recover royalty upon the quantity of coal produced for use or sale by the defendants, James M. Pennington, Raymond E. Phillips and Lillian Goad Phillips, Administratrix of the Estate of Burse Phillips, deceased, and the partnership Phillips Brothers Coal Company, only for the period from and after April 25, 1955

to and including December 31, 1958, or a total of 108,560.56 tons, at the rate of Forty Cents ($0.40) per ton, or the sum of Forty-three Thousand, Four Hundred Twenty-four and 22/100 ($43,424.22) Dollars.

. . . . . .